



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On February 2, 2004 _____

Date of Meeting: May 5, 2003

The Mayor and Council of the city of Tucson met in regular session in the Mayor and Council Chambers, in City Hall, 255 West Alameda, Tucson, Arizona, at 2:20 p.m. on Monday, May 5, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Mayor Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher

City Manager
Deputy City Manager

Michael House

City Attorney

Daniel Jacobs
Nora Dunn
Lannie Bugarin

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Frank Rose, Sunrise Chapel Swedenborgian, after which the pledge of allegiance was presented by the entire assembly.

Presentation:

A. Good Neighbor Month

Mayor Walkup proclaimed the month of May to be "Good Neighbor Month." The proclamation was accepted by Levonne Gaddy (Pro Neighborhoods) and Anita Fonte. Mayor Walkup announced that the City of Tucson and Pima County would honor special good neighbors at the Fifth Annual Good Neighbor Awards Celebration on May 31, 2003.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 261, dated May 5, 2003, would be received into and made a part of the record. He also announced that this was the time for any member of the council to report on current events and asked if there were any reports.

A. Joint Townhall on Transportation

Council Member Dunbar announced that on Wednesday, May 28, 2003, the ward six and ward three council offices would be hosting a joint town hall on transportation to discuss reversible lanes on Grant Road. The transportation department will be there to give a Grant/Dodge study report and a pedestrian study for Treat and Grant. The town hall will be held at 6:30 p.m. at the ward three council office.

B. Luz Social Services' Non-Alcoholic Event

Council Member Ronstadt noted that in light of 71 DUI arrests this weekend, praise should be given to Luz Social Services for their non-alcoholic event celebrating the victory over Napoleon by the Mexican army and did not need alcohol to celebrate. They celebrated the culture and history of Mexico, not alcohol.

C. Cinco de Mayo Celebration at Kennedy Park

Mayor Walkup thanked the members of the Hispanic community for the successful Cinco de Mayo celebration at Kennedy Park. He said he and his wife, Beth, were there from about 8:00 p.m. to 10:30 p.m. and there were 15,000 people there having a wonderful evening. He also thanked the city employees who were there to assist in the process of ensuring everyone was safe.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 262, dated May 5, 2003, would be received into and made a part of the record. He also announced that this was the time for the city manager to report on current events and asked for that report.

James Keene, city manager, had nothing to report.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter of importance for the attention of the council. Speakers are limited to five-minute presentations. The mayor also announced that there was a call to the audience at the end of the meeting. He said speakers could address the mayor and council on any item that was not scheduled on the agenda or speakers could come forward at the end of the meeting. Mayor Walkup reminded the audience that this was only for items not on the agenda. He asked if anyone wished to address the council at this time.

A. Patriot Act

Bill Katzel, urged the mayor and council to be informed before they vote. Whether it was casting a vote for a candidate at the ballot box or an elected official casting their vote on a matter representing their constituents, it is imperative that they be informed before they vote. As a former regulations officer for the U. S. public health service, it was his job to be informed on the health laws that Congress passed before he advised the assistant secretary for health and the secretary of health, education and welfare on how to implement these laws through the regulatory process. In past months, he had observed the council voting on matters affecting their constituents without being fully informed on the matters they voted on. He said that the council had placed an over-reliance on ill-advised recommendations from staff to reach their decisions on how to vote. Mr. Katzel said the council has ignored their responsibility to their constituents by reacting to information rather than fact finding for themselves before voting on issues. Fortunately, he said, these votes have not resulted in fatal errors. They have only adversely affected individuals or small groups of constituents.

Mr. Katzel brought forward a packet of material that he said had taken him all weekend to accumulate, read, digest and analyze. He recommended that the mayor and council also read, digest and analyze the material before they vote on it. The *USA Patriot Act* was too important an issue to vote on, before they become informed. He asked the mayor and council to defer their vote and become completely informed before voting on such a vital issue.

Mayor Walkup noted that the *USA Patriot Act* was on the agenda and reminded the audience that this was the time that members of the audience were allowed to address the mayor and council on any item not on the agenda.

6. CONSENT AGENDA – ITEMS A THROUGH K

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items by letter and title only.

A. REAL PROPERTY: ACQUISITION OF RIGHT-OF-WAY, SPEEDWAY BOULEVARD AND STONE AVENUE INTERSECTION IMPROVEMENT

- (1) Report from City Manager MAY5-03-254 W1

- (2) Resolution No. 19571 relating to real property; authorizing the City Manager to acquire by negotiation certain real property for improving the southwest corner of Speedway Boulevard and Stone Avenue; and declaring an emergency.
- B. INTERGOVERNMENTAL AGREEMENT: WITH THE STATE OF ARIZONA FOR SIDEWALKS ON THE WEST SIDE OF ORACLE ROAD, BETWEEN MIRACLE MILE AND PRINCE ROAD
 - (1) Report from City Manager MAY5-03-256 W3
 - (2) Resolution No. 19572 relating to Intergovernmental Agreements; approving and authorizing the Intergovernmental Agreement with State of Arizona for the construction and maintenance of sidewalks within the right-of-way on the west side of State Route 77, Oracle Road, between Miracle Mile and Prince Road; and declaring an emergency.
- C. INTERGOVERNMENTAL AGREEMENT: WITH THE STATE OF ARIZONA FOR THE BARRIO ANITA NOISE WALL MURALS AND PEDESTRIAN REST AREA
 - (1) Report from City Manager MAY5-03-257 W1
 - (2) Resolution No. 19573 relating to Intergovernmental Agreements; approving and authorizing the Intergovernmental Agreement with State of Arizona for the design, construction and maintenance of the Barrio Anita Noise Wall Murals and Pedestrian Rest Area; and declaring an emergency.
- D. INTERGOVERNMENTAL AGREEMENT: WITH FLOWING WELLS SCHOOL DISTRICT FOR A PEDESTRIAN CROSSING FLASHER ON FLOWING WELLS ROAD AT PASTIME ROAD
 - (1) Report from City Manager MAY5-03-258 W1 AND W3
 - (2) Resolution No. 19575 relating to Intergovernmental Agreements; approving and authorizing the Intergovernmental Agreement with Flowing Wells School District for a pedestrian flasher on Flowing Wells Road at Pastime Road; and declaring an emergency.
- E. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR ROADWAYS ON THE BOUNDARY OF THE JURISDICTIONS
 - (1) Report from City Manager MAY5-03-255 CITY-WIDE
 - (2) Resolution No. 19574 relating to Intergovernmental Agreements; approving and authorizing the Intergovernmental Agreement with Pima County for operations and maintenance of roadways on the boundaries of jurisdiction; and declaring an emergency.

- F. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE JACKSON EMPLOYMENT CENTER "EMPLOYMENT IN THE CONTINUUM OF CARE" SERVICES PROJECT
- (1) Report from City Manager MAY5-03-253 CITY-WIDE
 - (2) Resolution No. 19577 relating to Community Services; approving and authorizing execution of an Intergovernmental Agreement with Pima County for the Jackson Employment Center for the "Employment in the Continuum of Care" Services Project; and declaring an emergency.
- G. ASSURANCE AGREEMENT: (S02-026) PALOMINO TRAIL, LOTS 1 TO 26, AND COMMON AREAS "A" AND "B"
- (1) Report from City Manager MAY5-03-270 W2
 - (2) Resolution No. 19580 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval of a final plat for the Palomino Trail Subdivision, Case No. S02-026, Lots 1 to 26, and Common Areas "A" and "B"; and declaring an emergency.
- H. FINAL PLAT: (S02-026) PALOMINO TRAIL, LOTS 1 TO 26 AND COMMON AREAS "A" AND "B"
- (1) Report from City Manager MAY5-03-252 W2
 - (2) The City Manager recommends that, after the approval of the Assurance Agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- I. REAL PROPERTY: VACATION AND SALE OF SURPLUS CITY PROPERTY LOCATED AT 448 S. MAIN AVENUE TO DALE AND JOYCE AROUTY
- (1) Report from City Manager MAY5-03-265 W1
 - (2) Ordinance No. 9837 relating to real property; vacating and declaring certain city property at 448 S. Main Avenue, Tucson, AZ, to be surplus property, and authorizing the sale thereof to Dale and Joyce Aroudy; and declaring an emergency.
- J. PARKS AND RECREATION: AGREEMENTS WITH TUCSON YOUTH GOLF FUND FOR THE FIRST TEE PROGRAM AT THE TRINI ALVAREZ-EL RIO GOLF COURSE (CONTINUED FROM THE MEETING OF 4/14/03)
- (1) Report from City Manager MAY5-03-266 CITY-WIDE
 - (2) Resolution No. 19578 relating to parks and recreation; authorizing and approving the execution of Course Development Agreement and Facility Use Agreement between the City of Tucson and the Tucson Youth Golf Fund for the First Tee Program at the Trini Alvarez-El Rio Golf Course; and declaring an emergency.

K. PROFESSIONAL SERVICES CONTRACT: WITH HEINFELD, MEECH & CO.
FOR AUDIT SERVICES FOR FISCAL YEAR 2003

- (1) Report from City Manager MAY5-03-273 CITY-WIDE
- (2) Resolution No. 19582 relating to finance; authorizing and approving the execution of the independent auditor contract with Heinfield, Meech & Co., P.C.; and declaring an emergency.

Kathleen S. Detrick, city clerk, noted for the record that on Item I, surplus city property is located in ward six, not ward one.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott, that consent agenda items A through K be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused None

Consent agenda items A through K were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 264, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) Liquor License Applications(s)

New License(s)

- | | |
|---|---|
| (1) LIGHTHOUSE II
3073 N. Campbell Avenue
Applicant: Michael P. McNesby
City #019-03, located in Ward 3
Series #12
Action must be taken by: May 17, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
|---|---|

(c) Special Event(s)

- | | |
|---|-----------------------------|
| (1) TUCSON MUSEUM OF ART
140 N. Main | <u>Staff Recommendation</u> |
|---|-----------------------------|

Applicant: Charlie E. Bodden
City #T036-03, located in Ward 1
Date of Event: May 30, 2003
(Members' exhibition opening)

Police: In Compliance
DSD: In Compliance

(d) Extension of Premise(s)

- (1) RED LOBSTER RESTAURANT #369 Staff Recommendation
5061 N. Oracle Road
Applicant: Maria T. Montei Police: In Compliance
City #EP19-03, located in Ward 3 DSD: In Compliance
Date of Event: May 11, 2003
Type: Temporary
Series: #12
(Mother's Day Event)

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to forward liquor license applications city #019-03; city #T036-03, and city #EP19-03 to the state department of liquor licenses and control with a recommendation for approval.

8. FINANCE: FIXING AND LEVYING THE 2004 PRIMARY AND SECONDARY PROPERTY TAXES

Mayor Walkup announced that city manager's communication number 263, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9836 by number and title only.

Ordinance No. 9836

Relating to taxation; fixing, levying, and assessing Primary and Secondary Property Taxes for the City of Tucson upon the assessed valuation of the property within the City of Tucson subject to taxation, each in a certain sum upon each one hundred dollars of valuation, sufficient to raise the amount estimated to be required in the annual budget, less the amounts estimated to be received from other sources of revenue and unencumbered balances from the previous fiscal year; providing funds for various purposes, all for the fiscal year ending June 30, 2004; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member West, to pass and adopt ordinance no. 9836, noting that the council was not raising the primary property tax.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused None

Ordinance no. 9836 was declared passed and adopted by a roll call vote of 7 to 0.

9. ZONING: (C9-00-19) TUCSON MEDICAL CENTER - WILMOT ROAD, R-1 AND R-3 TO O-3, ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 259, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9835 by number and title only.

Ordinance No. 9835

Relating to zoning; amending zoning district boundaries in the area located at the northwest corner of Fifth Street and Wilmot Road in Case C9-00-19, Tucson Medical Center – Wilmot Road, R-1 and R-3 to O-3; and setting an effective date.

It was moved by Council Member Ronstadt, seconded by Council Member West, to pass and adopt ordinance no. 9835.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup.

Nay: None

Absent/Excused None

Ordinance no. 9835 was declared passed and adopted by a roll call vote of 7 to 0.

9. TUCSON CODE: (CHAPTER 19) – AMENDING THE TUCSON CODE RELATING TO LIQUOR LICENSE APPLICATION FEES AND PROCESS

Mayor Walkup announced that city manager's communication number 268, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9839 and resolution no. 19579 by numbers and titles only.

Ordinance No. 9839

Relating to licenses and privilege taxes; providing for full cost recovery of Liquor License Application Fees by amending the Tucson Code, Chapter 19, Licenses and privilege taxes, Article I, occupational license tax, Division 3, liquor and vending machine license tax, Section 19-53, applications; and declaring an emergency.

Resolution No. 19579

Relating to liquor license applications; adopting guidelines for special event and extensions of premises applications; and designating the Zoning Examiner make recommendations regarding extensions of premises; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, to pass and adopt ordinance no. 9839.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused None

Ordinance no. 9839 was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Ibarra, seconded by Council Member West, to pass and adopt resolution no. 19579.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused None

Resolution no. 19579 was declared passed and adopted by a roll call vote of 7 to 0.

11. FINANCE: TUCSON CONVENTION CENTER RENTAL RATES

Mayor Walkup announced that city manager's communication number 260, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19576 by number and title only, without objection.

Resolution No. 19576

Relating to the Tucson Convention Center; approving amendments to the Tucson Convention Center rules and regulations related to facility rental rates; allowing the Director of the Tucson Convention Center to set facility rental rates after June 30, 2004; and declaring an emergency.

It was moved by Council Member West, seconded by Council Member Ronstadt, that resolution no. 19576 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West, Dunbar and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: Council Members Ibarra and Leal

Absent/Excused: None

Resolution no. 19576 was declared passed and adopted by a roll call vote of 5 to 2.

For the purpose of the emergency clause, and that purpose only, Mayor Walkup called for the roll call vote:

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19576 was declared passed and adopted by a roll call vote of 7 to 0, with the emergency clause.

12. TUCSON CODE: (CHAPTER 19) – IMPLEMENTING THE USE TAX PROVISIONS OF THE MODEL CITY TAX CODE

Mayor Walkup announced that city manager's communication number 271, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9840 by number and title only.

Ordinance No. 9840

Relating to Use Taxation; adopting the use tax provisions of the model city tax code; repealing Tucson Code §§19-601 and 602; and declaring an emergency.

It was moved by Council Member West, seconded by Vice Mayor Scott, that ordinance no. 9840 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West and Leal; Vice Mayor Scott and Mayor Walkup

Nay: Council Members Ibarra, Dunbar and Ronstadt.

Absent/Excused: None

Ordinance no. 9840 was declared passed and adopted by a roll call vote of 4 to 3.

For the purpose of the emergency clause, and that purpose only, Mayor Walkup called for the roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9840 was declared passed and adopted by a roll call vote of 7 to 0, with the emergency clause.

Council Member West suggested that staff hold workshops for businesses and any other interested parties to explain details of the use tax, and asked that it be discussed at a future agenda.

13. TUCSON CODE: (CHAPTER 19) AMENDING THE TUCSON TRANSIENT OCCUPANCY TAX RATE (BED TAX)

Mayor Walkup announced that city manager's communication number 269, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9838 by number and title only.

Ordinance No. 9838

Relating to Occupational License Taxes; increasing the Transient Occupancy Tax by amending Section 19-66; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, that ordinance no. 9838 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, Leal, Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: Council Members Ibarra

Absent/Excused: None

Ordinance no. 9838 was declared passed and adopted by a roll call vote of 6 to 1.

14. MASTER OPERATING AGREEMENT: WITH THE METROPOLITAN TUCSON CONVENTION AND VISITORS BUREAU FOR THE PROMOTION OF TOURISM IN TUCSON

Mayor Walkup announced that city manager's communication number 272, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19581 by number and title only.

Resolution No. 19581

Relating to Metropolitan Tucson Convention and Visitors Bureau; authorizing and approving the execution of a Master Operating Agreement between the City of Tucson and the Metropolitan Tucson Convention and Visitors Bureau; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member West, that resolution no. 19581 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19581 was declared passed and adopted by a roll call vote of 7 to 0.

15. WATER: ADOPTION OF WATER SYSTEM EQUITY FEE

Mayor Walkup announced that city manager's communication number 274, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9842 by number and title only.

Ordinance No. 9842

Relating to water; amending certain portions of the Tucson Code, Chapter 27, Article II, rates and charges, Section 27-32.1, monthly reclaimed water service charges, Section 27-33, monthly potable water service charges, Section 27-35, charges for installation of water service connections, Section 27-36, area-specific water development fee, Section 27-37, agreements for construction of water facilities authorized, Section 27-38, provisions for refund of cost of water mains or water facilities installed by private contract under certain conditions authorized, Section 27-43, charge when meter not registering properly; and declaring an emergency.

James Keene, city manager, requested that this item be continued one week. He stated materials went out with late delivery and he wanted to make sure there was time to brief council members on this item. There were also a number of questions that had come up from the public that he thought they would be in a better position to respond to in a week.

It was moved by Council Member Dunbar, seconded by Council Member West, and carried by a voice vote of 7 to 0, to continue ordinance no. 9842 to the meeting of May 12, 2003, at the request of the city manager.

16. MAYOR AND COUNCIL: POSITION REGARDING THE USA PATRIOT ACT

Mayor Walkup announced that city manager's communication number 275, dated May 5, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19583 by number and title only.

Resolution No. 19583

Relating to the PATRIOT Act; affirming the City of Tucson's commitment to preserving the rights guaranteed by the Federal Constitution; expressing concern that the PATRIOT Act infringes on constitutionally protected rights; and calling upon Arizona's Congressional Delegation to monitor the implementation of the PATRIOT Act and advocate the rights guaranteed by the constitution; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Leal said that before he commented, he knew there were a number of people who had requested to speak on this item, but there were two he wanted to ask to come forward, if they were present, Pam Sutherland and Cornelius Steelink.

Council Member Leal asked Mr. Steelink to come up. He said he knew the ACLU sent in some agreed upon language in response to three questions from city staff. He understood that the changes in the language as currently stated was agreeable to everybody.

Cornelius Steelink, 5849 E. Baker Street, agreed and urged the council to support the resolution as amended by the city manager.

Council Member Leal said that in the six months that he had watched the community come together, people from all the different parties, emerge out of concerns about what is found in the *Patriot Act*, some of the ironies and fears about the *Patriot Act*. He said it had been both gratifying and an object of respect to see the community come together with a common concern – something that is foundational to what America is about. He said he had seen a lot of political efforts with different kinds of constituencies. This one has been really broad, very genuine, and really what America is about. Council Member Leal continued that he had a lot of respect and admiration for all for work that was put in to carry this forward and going out to the community. The concern was that “we are the home of the brave,” and they just wanted to make sure we continue to be the land of the free.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, that resolution no. 19583, as amended by the city attorney, be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Mayor Walkup said that before he voted, he wanted to say that this was not a city issue. He understood that there were a lot of questions about the constitutionality about provisions of the Patriot Act. Mayor Walkup wanted to make sure that those questions were addressed through the courts and not by the city council.

Upon roll call, the results were:

Aye: Council Members Ibarra, West and Leal; Vice Mayor Scott.

Nay: Council Members Dunbar and Ronstadt; Mayor Walkup.

Absent/Excused: None

Resolution no. 19583, as amended by the city attorney, was declared passed and adopted by a roll call vote of 4 to 3.

For the purpose of the emergency clause, and that purpose only, Mayor Walkup called for the roll call vote:

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar and Leal, Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19583 was declared passed and adopted by a roll call vote of 7 to 0, with the emergency clause.

Council Member Leal noted for clarification that if the EPA was considering lessening water quality standards, we would think it was a city issue. So, when the discussion is about something that lessens or pollutes the Constitution and the *Bill of Rights*, it is a city issue.

17. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 267, dated May 5, 2003, would be received into and made a part of the record. He asked if there were any personal appointments by any member of the council.

There were none.

18. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter of importance for the attention of the council. Speakers are limited to three-minute presentations. He asked if anyone wished to address the council.

A. Water System Equity Fee

Tres English, said he was at the meeting to comment on the water system equity fee, which he thought was a critically important issue to the future development of this community. He said the city always had a policy to charge people more than it actually costs to provide them with service. He felt that it was a very bad idea to provide hidden subsidies to businesses for the benefit of that particular industry, but it

had been a city policy for many years. This provides the city with an interesting opportunity, because that overpayment really represents an equity investment by each property owner in the system that was created to support each additional house that was added to this community, over the entire lifetime that Tucson Water had been in existence.

Mr. English stated that the whole center part of Tucson is reaching the point where tens of thousands of houses are in need of a variety of different redevelopment – rehabilitation in roofs, furnaces, water supply, or a variety of different things. In many instances the property owners and occupants of those houses do not have the capital resources to do the work that is needed in order to maintain the livability of literally tens of thousands of houses in Tucson that make up the bulk of the incorporated city.

Mr. English suggested that the overpayment that had been made for decades constitutes an equity investment that the city of Tucson should return to the property owners. The properties, in the form of those investments needed to maintain water service – would give them the right to some assistance from the city, in the form of a return of the money they have already spent. Mr. English urged that the council look on this as an opportunity to promote the rehabilitation of tens of thousands of houses in Tucson that are going to need major work over the coming decade.

B. Patriot Act

Robert Reus, said that since they were not allowed to comment on the Patriot Act, he wanted to refer to the mayor's reasoning last week for voting against the preliminary vote on this resolution. He stated the mayor quoted Thomas Jefferson, and the statement he made was "the price of liberty is eternal vigilance." Mr. Reus said that Mr. Jefferson really said that, but the statement was used out of context, and he resented the fact that his quote was used in support of what he considers an authoritarian act, the Patriot Act. Mr. Reus said that when he quotes Jefferson, he tries to get it right or tries to get his first volume of the Jefferson Encyclopedia. He was referring to a Jefferson Encyclopedia "A Comprehensive Collection of the Views of Thomas Jefferson," classified and arranged in alphabetical order under 9,000 titles. He suggested to the mayor that if he wished to quote Jefferson, he should obtain a copy of the document.

Lastly, Mr. Reus, referred to another book "*Hamilton and Jefferson*", written by Claude Bowers in 1925 entitled "*Jefferson and Hamilton, the Struggle for Democracy in America, a seminal book*". Mr. Reus said the book had taught him the understanding of the difference between federalists and Jeffersonian principles and the fact that there are two roads that one could walk, not just the one that everyone seems to be on. The book covers the entire 12-year period, from the inception of the Constitution and the inauguration of George Washington to the triumph – "*Democracy Triumph*" the final chapter, in which Jefferson was elected President. He said one of the chapters is called the "*Reign of Terror*," and requested permission to read one paragraph so that people could understand that things haven't changed in 200 years. He said this was the period immediately before Jefferson was elected. The *Bill of Rights* had been passed, but it was not being enforced. He added that about three years before Jefferson's election, they passed what was called the *Sedition Act*, which made it illegal to criticize the government.

Mr. Reus proceeded to read a paragraph from the "*Reign of Terror*".

Mayor Walkup advised Mr. Reus that there were other speakers, and suggested that he come back and finish his statement when the other speakers had a chance to speak.

Carter Rose, wished to make a couple of comments on the *Patriot Act*. Mr. Rose said he had submitted a card and thought it was going to go through the process, but he was disoriented to exactly how the process goes to speak before the city council. Mr. Rose said that "The Price of Democracy is Eternal Vigilance." He said that meant that they had to keep their concepts tuned up with the times as best as they could – keep them contemporary. He said the best essay he knows of in this regard was becoming increasingly more famous and probably one of the best essays written in the last century was called "The Instruments of Darkness". It starts out with Shakespeare and a Macbeth scene with the shape shifting people around the pot on the hearth in England. The whole point of the essay was "the way that they can see the future is what they're going to get".

Mr. Rose recommended to the council a short essay on the paying the price of eternal vigilance, the "*Instruments of Darkness*" by Loren Isley. It's in a book called "*The Night Country*," published about 20 years ago.

The second thing Mr. Rose wanted to point out was an example of what he was talking about in this essay, and referred to an article that appeared within the last two weeks in the *Los Angeles Times*, about some very unfortunate events that took place in a restaurant in New York City.

Mark Waterstone, also expressed confusion about the procedure. He felt that it would have been useful to hear from people prior to the vote and maybe some minds would have been changed. He was glad the resolution was passed, but felt people should have had a chance to speak prior to the vote. Mr. Waterstone also wanted to offer a quote, and quoted Benjamin Franklin. "They that can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety." He suggested that with the *USA Patriot Act*, that's exactly what they got, neither liberty nor increased safety.

Mr. Waterstone said the last point he wanted to make, since the resolution was adopted, for which he commended the council, was to make sure that all relevant city policies use the language and the spirit of the resolution as their guidelines. He urged the city not to fall into the trap of trading liberty for false safety. Mr. Waterstone ended his comments with a quote from Abraham Lincoln.

C. 2% Use Tax

John Almond, wanted to comment on the sales tax ordinance which was just adopted. Mr. Almond owns a business in the county that will be affected by the ordinance. He does a lot of business with citizens of the city of Tucson. He said he couldn't agree more with Council Member West 's concerns for the confusion. He was out of state when this took place, so he had been scrambling hard for information. Mr. Almond said he met with a group of 53 business leaders and asked them if they could provide him information on this. Mr. Almond stated they were all dumbfounded. He said these business representatives did not have a clue on the impact this ordinance would have on taxation of city residents, who had been able to enjoy the

\$4 million in savings by dealing with county businesses. Mr. Almond noted that the council's desire was to assess \$4 million in taxation by passing this ordinance, but he felt the council had an uninformed citizen consumer in Tucson.

Mr. Almond said his understanding was that on April 21, mayor and council directed staff to prepare an ordinance for adoption of the 2% use tax, and then on April 28, that ordinance was adopted by the mayor and council with an effective date of July 1. Yet, on May 1, he said he visited with Robert Leko, city's audit administrator, who informed him that he could not provide a copy of the ordinance or any of the particulars, as far as responsibility for collection and remittance of this tax, because there was no ordinance – that it had yet to be drafted. As a matter of fact, it was just today that it was made available to the public. Mr. Almond apologized for being naïve on this matter. However, he did not understand how the mayor and council could vote on something of such magnitude, not only to the taxpayer but also to the businesses located in the county. He said this tax had the potential of closing his business, given just a small period of time. Mr. Almond ended his comments by urging the council to reconsider the 2% sales tax.

Council Member West asked if someone could talk to Mr. Almond, briefly, to explain how this works.

James Keene, city manager, asked city staff to respond to Mr. Almond's concerns.

D. Patriot Act

Richard Cook, responded to the mayor's statement that "this is not a city issue." He stated that it was a city issue, it was a citizen issue, and it was the only forum at the time. Anytime they infringe upon their guaranteed rights under the Constitution, they need to speak up.

E. Military Over-Flights

David Ray, said he did not feel Tucson is lacking deference to the military. Everywhere he goes, he hears Tucson described as a town that is progressively more a military town. The relevance to him, is that every day their lives are threatened by military over-flights. He said they are low-level, they are loud, they crack plaster; and as far as he's aware, there have been fatalities in the past from them. He said they are actually flying bombs, and lately some of them had been actually armed.

Mr. Ray said he was not aware that the council had, at any time, protested or attempted to negotiate with the military for them to evade the city. He felt that surely, it would be possible to change some of the flight paths. According to the news, he stated, the problem is just going to get worse. If we are passive, we simply are going to have to accept the inevitable accidents and loss of lives. Mr. Ray added that it is also an environmental pollution that is very heavy.

F. Patriot Act

Robert Reus, commented on the mayor's strict interpretation of the three-minute rule. As far as he was concerned, that is one of the reasons he was endorsing and supporting the mayor's opponent in the coming election.

Mr. Reus continued his earlier comments in support of the *Patriot Act*.

Carolyn Classen, thanked the mayor and council for passing the resolution opposing the Patriot Act. She said she wrote to mayor and council members last week because she felt moved to come forward. She said members of her Japanese/American family (including her father) during WWII were interned and relocated. She thinks if there were more cities at that time that would have taken stands against executive order 9066, that might not have happened. There was a lot of talk about why it happened - because of national security, because of military necessity. She said that most every one knows that Congress has apologized and there was a study done, which she was instrumental in getting through, that it was not those reasons. It was racism, and all those 110,000 people were denied their due process of law. Ms. Classen said she felt that this is what this law would have done. The *Patriot Act* is a dangerous instrument, and she was very glad to see this coalition of people at the council meeting to speak in favor of Council Member Leal's resolution and she thanked the mayor and council again on behalf of her family and everyone else who believed in civil rights.

19. ADJOURNMENT: 3:13 p.m.

Mayor Walkup announced that the council would stand adjourned until the next regularly scheduled meeting to be held on Monday, May 12, 2003, at 7:30 p.m., in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 5th day of May, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DD:sac
Pr agnst tp:nd